

Applicants: Pablo Rubinstein et al.
Serial No.: 09/855,789
Filed: May 15, 2001
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REMARKS

Claims 78-96 were pending in the subject application. Claims 78-90 were withdrawn from consideration by the Examiner as drawn to non-elected subject matter. By this Amendment, Claims 78-90, 92, 94 and 95 have been canceled without prejudice or disclaimer, Claim 91 has been amended, and new Claims 97-103 have been added.

Applicants maintain that the amendments to the claims do not raise an issue of new matter. Support for the amendments to Claim 91 can be found in the application at least on page 10, second to last paragraph, and in original Claim 21. Support for new Claims 97-102 can be found in previous version of the claims and in the application at least as follows: Claims 97-98 - page 12, last line through page 13, first line, and Claims 99-102 - page 17, first paragraph. Support for new Claim 103 can be found at least in Claims 91 and 96. The amendments place the application in condition for allowance or in better form for appeal. Accordingly, entry of the amendments is respectfully requested.

Rejections under 35 U.S.C. 112, First Paragraph

Previous Claims 91-96 were rejected as failing to comply with the written description requirement of 35 U.S.C. 112, first paragraph. The Examiner stated that there is not an adequate written description such that the claimed product is obtained such that when thawed the white blood cells have a viability greater than 90% with respect to cord or placental blood where a person skilled in the art can make and use the subject matter defined without undue experimentation. The Examiner also stated that the application does not set forth the best mode for carrying out this invention. The claims have hereinabove been amended to delete reference to thawed blood cells. Accordingly, reconsideration and withdrawal of this ground of rejection are respectfully requested.

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Rejections over Boyse et al., U.S. Patent No. 5,004,681

Claims 91-96 were rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over, Boyse et al. (U.S. Patent No. 5,004,681) (hereinafter "BOYSE"). The Examiner in particular refers to Table III in BOYSE.

Applicants note that Table III in BOYSE refers to the viability of cells contained in a sample and does not reflect the numbers of cells that are lost during cell separation procedures (see Column 37, 2nd paragraph). Table IV in BOYSE sets forth the numbers of different cell types obtained after cell separation procedures. For white blood cells ("CFU-GM" in Table IV (see definitions in Columns 8-9)), the percent recovery falls well below the "at least 80% of white blood cells" recited in the present independent claims. Accordingly, reconsideration and withdrawal of this ground of rejection are respectfully requested.

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CONCLUSIONS


In view of the amendments and the remarks made hereinabove, applicants respectfully request reconsideration and withdrawal of the rejections in the December 27, 2005 Final Office Action and passage the pending claims to allowance. If there are any minor matters that prevent allowance of the subject application, the Examiner is requested to contact the undersigned attorney.

No fee is deemed necessary in connection with the filing of this reply. However, if there are unanticipated fees required to maintain the pendency of this application, the PTO is authorized to withdraw the amount of any such fee from Deposit Account 01-1785.

Respectfully submitted,

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